



State of Utah

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Governor

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Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Scott T. Anderson
Director

July 12, 2018

Richard P. Bay
General Manager/CEO
Jordan Valley Water Conservancy District
8215 South 1300 West
West Jordan, Utah 84088

RE: Proposed Stipulation and Consent Order No. 1807055 for Resolution of Notice of Violation and Compliance Order No. 1709022 and Notice of Violation No. 1806048

Dear Mr. Bay:

Enclosed please find a proposed Stipulation and Consent Order (SCO) and penalty calculations worksheets to resolve the above-referenced matters. The SCO includes a penalty of \$41,210 for Notice of Violation and Compliance Order No. 1709022 and a penalty of \$13,000 for Notice of Violation No. 1806048. The Division of Waste Management and Radiation Control expended \$10,755 in administrative response costs to develop and implement the Sampling and Analysis Plan on the Jenstate property. I infer from your letter of June 28, 2018 that Jordan Valley Water Conservancy District will reimburse those costs.

When we reach agreement, I will publish notice of a 30-day public comment period on this proposed SCO, in accordance with Utah Administrative Code R315-124-34. I will then present the proposed SCO to the Board, with all public comments, if any, and my responses to those comments. After the Board approves the SCO, I will submit the final version of the SCO to you for your signature. I will then sign the SCO, which will become effective on the date I sign it.

Please call me at (801) 536-0203 by July 31, 2018 to tell me if the terms are acceptable or to schedule a meeting to discuss the SCO.

Sincerely,

Scott T. Anderson, Director
Division of Waste Management and Radiation Control

(Over)

DSHW-2018-006391

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STA/EGC/kl

Enclosure: Proposed Stipulation and Consent Order
Penalty Narrative (DSHW-2018-006389)
Penalty Worksheet (DSHW-2018-006390)

c: Gregory J. Savage; Ray, Quinney and Nebeker

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In the Matter of:	:	PROPOSED STIPULATION AND CONSENT ORDER
	:	
Jordan Valley Water Conservancy District, Notice of Violation and Compliance Order No. 1709022 and Notice of Violation No. 1806048	:	No. 1807055
	:	

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I. JURISDICTION AND PARTIES

1. This Stipulation and Consent Order (SCO) is made and entered into pursuant to the authority vested in the Director of the Utah Division of Waste Management and Radiation Control (Director), in accordance with the Utah Solid and Hazardous Waste Act (Act), Utah Code Ann. §19-6-101, *et seq.* The Director has jurisdiction over the subject matter of this Consent Order pursuant to Utah Code Ann. §19-6-112.
2. This SCO is made and entered into by the Director and Jordan Valley Water Conservancy District (JVWCD).
3. Pursuant to Utah Code Ann. §19-6-104(1)(f), because this SCO will result in a civil penalty in excess of \$25,000, the Waste Management and Radiation Control Board must review and approve or disapprove the SCO.

II. FINDINGS

4. JVWCD is a Utah special services district.
5. JVWCD is a “person” as defined in Utah Code Ann. § 19-1-103(4) and is subject to all applicable provisions of the Utah Administrative Code (the Rules), the Act, and the Permit.
6. Notice of Violation and Consent Order No. 1709022 (the 2017 NOV/CO) was issued to JVWCD on September 22, 2017.
7. JVWCD filed a Request for Agency Action challenging the 2017 NOV/CO on October 20, 2017.
8. Notice of Violation No. 1806048 was issued to JVWCD on June 20, 2018.

III. STIPULATION AND CONSENT ORDER

9. The parties now wish to fully resolve the 2017 NOV/CO and the 2018 NOV without further administrative or judicial proceedings.

10. In full settlement of the violations alleged in the 2017 NOV/CO, JWCD shall pay a penalty of \$41,210.
11. In full settlement of the violation alleged in the 2018 NOV, JWCD shall pay a penalty of \$13,000.
12. JWCD shall pay the Director's \$10,755 administrative response costs for preparation and implementation of the Sampling and Analysis Plan.
13. Within 30 days of the Effective Date (as defined below), JWCD agrees as follows:
 - a. JWCD shall pay a penalty in the sum of \$54,210, by check made payable to the Division of Waste Management and Radiation Control, delivered or mailed to Scott T. Anderson, Director, Division of Waste Management and Radiation Control, Department of Environmental Quality, P.O. Box 144880, Salt Lake City, Utah 84114-4880; and
 - b. JWCD shall pay to the Division of Waste Management Radiation Control, past administrative response costs in the sum of \$10,755 by check made payable to the Division of Waste Management and Radiation Control, delivered or mailed to Scott T. Anderson, Director, Division of Waste Management and Radiation Control, Department of Environmental Quality, P.O. Box 144880, Salt Lake City, Utah, 84114-4880.

IV. EFFECT OF CONSENT ORDER; EFFECTIVE DATE

14. The Director and JWCD recognize that this SCO has been negotiated in good faith and that by entering into this SCO, JWCD does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this SCO, the validity of the matters addressed in this SCO. JWCD agrees to comply with and be bound by the terms of this SCO and further agrees that it will not contest the basis or validity of this SCO or its terms.
15. Except as specifically provided in this SCO, this SCO resolves the 2017 NOV/CO and the 2018 NOV and releases JWCD from any and all liability and claims under the authority of the Director and the Board for civil penalties that may be sought by the Director, or past administrative or other response costs that may have been incurred by the Director, arising from the matters addressed in this SCO. Nothing in this SCO shall limit the power and authority of the Director to take, direct, or order all actions necessary, in connection with future violations of the Act, or the applicable Rules, to protect human health, welfare, or the environment. Further, nothing in this SCO shall prevent the Director or the Board from seeking legal or equitable relief to enforce the terms of this SCO or from taking other legal or equitable action as they deem appropriate and necessary in connection with future violations of the Act.
16. As of the effective date, this SCO will be a final administrative order subject to the civil enforcement provisions of Utah Code Ann. § 63G-4-501 and other applicable law, including Utah Code Ann. § 19-6-113.

17. By entering into this SCO, JWCD withdraws its Requests for Agency Action filed in response to the 2017 NOV/CO.

Jordan Valley Water Conservancy District

Division of Waste Management and Radiation Control

Richard P. Bay
General Manager/CEO

Scott T. Anderson, Director
Division of Waste Management and Radiation Control

DATE: _____

DATE: _____

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1709022

Violation Number 1

Violation Description:

Failing to Have Required Wording on Containers

1. Gravity Based Penalty

- (a) Potential for Harm – Moderate. Without the proper labeling, the waste had the potential to be mismanaged. In fact, three drums were mismanaged, being sent offsite as a non-hazardous waste. The required labeling would have indicated that the contents of the drums were hazardous waste.
- (b) Extent of Deviation – Major. There were three metal drums that contained spent blast media that failed the toxicity characteristic leaching procedure (TCLP) for lead. All three drums lacked the required wording.
- (c) Multiple/Multi-day – N/A

2. Adjustment Factors (if applicable) –

- (a) Good faith – N/A
- (b) Willfulness/Negligence – N/A
- (c) History of Compliance or Noncompliance – N/A
- (d) Ability to pay – N/A
- (e) Other Unique Factors –

3. Economic Benefit –

4. Recalculation of Penalty based on New Information –

TOTAL: \$4,940

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1709022

Violation Number 2

Violation Description: Failing to Apply the Date Accumulation Began on Containers

1. Gravity Based Penalty
 - (a) Potential for Harm – Minor. The date of accumulation began did not significantly affect the management of the containers.
 - (b) Extent of Deviation – Major. All three drums that failed TCLP for lead lacked the date accumulation began.
 - (c) Multiple/Multi-day – N/A
2. Adjustment Factors (if applicable) –
 - (a) Good faith –
 - (b) Willfulness/Negligence –
 - (c) History of Compliance or Noncompliance – N/A
 - (d) Ability to pay –
 - (e) Other Unique Factors –
3. Economic Benefit –
4. Recalculation of Penalty based on New Information –

TOTAL: \$1,170

(attach additional sheets if necessary)

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1709022

Violation Number 3

Violation Description:

Failing to Obtain an EPA ID Number

1. Gravity Based Penalty

- (a) Potential for Harm – Major. The RCRA program requires the tracking of waste from the point of generation to the disposal facility. This is the “cradle to grave” concept of waste management and is the backbone of the RCRA program. The mechanism for tracking the waste from the cradle to grave is the EPA ID number. Since an EPA ID number was not obtained, the tracking of the waste was not possible.
- (b) Extent of Deviation – Major. JVWCD failed to obtain an EPA ID number as required.
- (c) Multiple/Multi-day –

2. Adjustment Factors (if applicable) –

- (a) Good faith –
- (b) Willfulness/Negligence –
- (c) History of Compliance or Noncompliance –
- (d) Ability to pay – N/A
- (e) Other Unique Factors –

3. Economic Benefit- Considered, but found not appropriate.

4. Recalculation of Penalty based on New Information –

TOTAL: \$11,700

**NARATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1709022

Violation Number 4

Violation Description: Transporting Hazardous Waste Without a Manifest

1. Gravity Based Penalty

- (a) Potential for Harm – Major. The RCRA program requires the tracking of waste from the point of generation to the disposal facility. This is the “cradle to grave” concept of waste management and is the backbone of the RCRA program. A key component of the tracking process is the use of the uniform hazardous waste manifest. The manifest contains important information, identifying the waste for those who transport the waste and for the treatment storage and disposal facility. The information is also used in hazard communication in the event of an accident. Three drums containing hazardous waste were shipped from the point of generation without the use of a manifest.
- (b) Extent of Deviation – Major. All three drums that failed TCLP for lead were shipped without a uniform hazardous waste manifest.
- (c) Multiple/Multi-day – N/A

2. Adjustment Factors (if applicable) –

- (a) Good faith –
- (b) Willfulness/Negligence –
- (c) History of Compliance or Noncompliance – N/A
- (d) Ability to pay – N/A
- (e) Other Unique Factors –

3. Economic Benefit-Considered, but determined not to be applicable.

4. Recalculation of Penalty based on New Information –

TOTAL: \$11,700

(attach additional sheets if necessary)

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1709022

Violation Number 5

Violation Description:

Disposing of Solid Waste without a Permit

1. Gravity Based Penalty

- (a) Potential for Harm – Major. When solid waste is disposed of without a permit, there is a significant possibility that it will be disposed of in a manner that could harm human health or the environment. Appropriate management standards and engineering controls would not be applied to avoid those harms. In this case, the waste was placed on the ground surface at a residence, which was across the street from a daycare facility. The Safety Data Sheet (SDS) indicates that the blast media, even before use, presents an inhalation hazard. Analysis of samples taken by the Division indicated that the spent blast media contained high levels of hexavalent chromium, a known carcinogen. Further, the concentration of the hexavalent chromium exceeds the values established in the Regional Screening Levels for a residential setting.
- (b) Extent of Deviation – Major. JWCD did not obtain a permit to dispose solid waste on the property.

(c) Multiple/Multi-day –

2. Adjustment Factors (if applicable) –

- (a) Good faith – N/A
- (b) Willfulness/Negligence –
- (c) History of Compliance or Noncompliance – N/A
- (d) Ability to pay – N/A
- (e) Other Unique Factors –

3. Economic Benefit-Considered but not calculated due to the difficulty in determining the amount of benefit.

4. Recalculation of Penalty based on New Information –

TOTAL: \$11,700

(attach additional sheets if necessary)

SETTLEMENT PENALTY AMOUNT

Company Name: Jordan Valley Water Conservancy District
 ID#:

NOV #: 1709022
 NOV Date: 09 Sept 2017

Prepared By: Ed Costomiris
 Date Prepared: 10 July 2018

Finding number (from NOV)	1	2	3	4
Finding Description	Words on Containers	Accumulation Dates	No EPA ID Number	Transporting Without a Manifest
1. Gravity based penalty from the matrix	\$4,940.00	\$1,170.00	\$11,700.00	\$11,700.00
(a) Potential for Harm	Moderate	Minor	Major	Major
(b) Extent of Deviation	Major	Major	Major	Major
2. Select an amount from the appropriate multiday matrix cell				
(a) Number of days of violation				
3. Multiply Item 2 by the number of days of violation minus 1 (or other number, as appropriate)	\$0.00	\$0.00	\$0.00	\$0.00
4. Add items 1 and 3	\$4,940.00	\$1,170.00	\$11,700.00	\$11,700.00
5. Good Faith				
(a) Percent increase				
(b) Percent decrease				
6. Willfulness/negligence				
(a) Percent increase				
(b) Percent decrease				
7. History of compliance/noncompliance				
(a) Percent increase				
(b) Percent decrease				
8. Other unique factors				
(a) Percent increase				
(b) Percent decrease				
9. Total items 5 through 8	0%			0%
10. Multiply item 4 by item 9	\$0.00	\$0.00	\$0.00	\$0.00
11. Add items 4 and 10	\$4,940.00	\$1,170.00	\$11,700.00	\$11,700.00
12. Adjustment for environmental project				
13. Subtract item 12 from item 11	\$4,940.00	\$1,170.00	\$11,700.00	\$11,700.00
14. Calculate economic benefit				
15. Add items 13 and 14	\$4,940.00	\$1,170.00	\$11,700.00	\$11,700.00
16. Adjustment amount for ability to pay				
17. Adjustment amount for litigation risk				
18. Add items 16 and 17	\$0.00	\$0.00	\$0.00	\$0.00
19. Subtract item 18 from item 15 for final settlement total	\$4,940.00	\$1,170.00	\$11,700.00	\$11,700.00

TOTAL THIS PAGE = \$29,510 RUNNING TOTAL = \$29,510

SETTLEMENT PENALTY AMOUNT

Company Name: Jordan Valley Water Conservancy District
 ID#:

NOV #: 1709022
NOV Date: 20 June 2018

Prepared By: Ed Costomiris
Date Prepared: 10 July 2018

Finding number (from NOV)	5				
Finding Description	Disposing of Solid Waste without a Permit				
1. Gravity based penalty from the matrix	\$11,700.00				
(a) Potential for Harm	Major				
(b) Extent of Deviation	Major				
2. Select an amount from the appropriate multiday matrix cell					
(a) Number of days of violation					
3. Multiply Item 2 by the number of days of violation minus 1 (or other number, as appropriate)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
4. Add items 1 and 3	\$11,700.00	\$0.00	\$0.00	\$0.00	\$0.00
5. Good Faith					
(a) Percent increase					
(b) Percent decrease					
6. Willfulness/negligence					
(a) Percent increase					
(b) Percent decrease					
7. History of compliance/noncompliance					
(a) Percent increase					
(b) Percent decrease					
8. Other unique factors					
(a) Percent increase					
(b) Percent decrease					
9. Total items 5 through 8			10%		0%
10. Multiply item 4 by item 9	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
11. Add items 4 and 10	\$11,700.00	\$0.00	\$0.00	\$0.00	\$0.00
12. Adjustment for environmental project					
13. Subtract item 12 from item 11	\$11,700.00	\$0.00	\$0.00	\$0.00	\$0.00
14. Calculate economic benefit					
15. Add items 13 and 14	\$11,700.00	\$0.00	\$0.00	\$0.00	\$0.00
16. Adjustment amount for ability to pay					
17. Adjustment amount for litigation risk					
18. Add items 16 and 17	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
19. Subtract item 18 from item 15 for final settlement total	\$11,700.00			\$0.00	

Violations 1 through 5

\$41,210.00

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1806048

Violation Number 1

Violation Description: Failing to Provide a Sampling and Analysis Plan as Required

1. Gravity Based Penalty

- (a) Potential for Harm – Major. The lack of a timely Sampling and Analysis Plan (SAP) delayed characterization and subsequent removal of the spent blast media. As a result, the spent blast media remained on the ground, subject to wind and other dispersal, for an additional 100 days, beside a residence and directly across the street from a daycare.
- (b) Extent of Deviation – Major. J VWCD failed to provide the Director with a Sampling and Analysis Plan as required in the Notice of Violation, Dated September 22, 2018 and again in correspondence dated October 25, 2017, which ordered that the SAP be provided within 14 days. The 14 days expired on November 8, 2017. The Draft SAP was provided on February 9, 2018, 100 days following the November 8, 2017 deadline.
- (c) Multiple/Multi-day – Considered but not calculated.

2. Adjustment Factors (if applicable) –

- (a) Good faith –
- (b) Willfulness/Negligence –
- (c) History of Compliance or Noncompliance –
- (d) Ability to pay – N/A
- (e) Other Unique Factors-Costs incurred by the State: Considered, but not applied.

3. Economic Benefit –

4. Recalculation of Penalty based on New Information –

TOTAL: \$13,000

SETTLEMENT PENALTY AMOUNT

Company Name: Jordan Valley Water Conservancy District
 ID#:

NOV #: 1806048
 NOV Date: 09 Sept 2017

Prepared By: Ed Costomiris
 Date Prepared: 10 July 2018

Finding number (from NOV)	1	2	3	4
Finding Description	Failing to Provide a SAP as Required			
1. Gravity based penalty from the matrix	\$13,000.00			
(a) Potential for Harm	Major			
(b) Extent of Deviation	Major			
2. Select an amount from the appropriate multiday matrix cell				
(a) Number of days of violation				
3. Multiply Item 2 by the number of days of violation minus 1 (or other number, as appropriate)	\$0.00	\$0.00	\$0.00	\$0.00
4. Add items 1 and 3	\$13,000.00	\$0.00	\$0.00	\$0.00
5. Good Faith				
(a) Percent increase				
(b) Percent decrease				
6. Willfulness/negligence				
(a) Percent increase				
(b) Percent decrease				
7. History of compliance/noncompliance				
(a) Percent increase				
(b) Percent decrease				
8. Other unique factors				
(a) Percent increase	0%			
(b) Percent decrease				
#VALUE!	0%	0%	0%	0%
10. Multiply item 4 by item 9	\$0.00	\$0.00	\$0.00	\$0.00
11. Add items 4 and 10	\$13,000.00	\$0.00	\$0.00	\$0.00
12. Adjustment for environmental project				
13. Subtract item 12 from item 11	\$13,000.00	\$0.00	\$0.00	\$0.00
14. Calculate economic benefit				
15. Add items 13 and 14	\$13,000.00	\$0.00	\$0.00	\$0.00
16. Adjustment amount for ability to pay				
17. Adjustment amount for litigation risk				
18. Add items 16 and 17	\$0.00	\$0.00	\$0.00	\$0.00
19. Subtract item 18 from item 15 for final settlement total	\$13,000.00	\$0.00	\$0.00	\$0.00

Total this Page = \$13,000